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UNITED STATES DEPARTMENT OF AGRICULTURE
CONSUMER AND MARKETING SERVICE
WASHINGTON, D.C. 20250

CONTRACT TERMS AND CONDITIONS
FOR THE
PURCHASE OF AGRICULTURAL PRODUCTS



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UNITED STATES DEPARTMENT OF AGRICULTURE
Consumer and Marketing Service
Washington, D. C. 20250

CONSUMER AND MARKETING SERVICE CONTRACT TERMS AND CONDITIONS
FOR THE PURCHASE OF AGRICULTURAL PRODUCTS

This Document contains information, representations and requirements relating to the submission and acceptance of offers made pursuant to serially numbered announcements or invitations for offers which specifically incorporate this Document, in whole or in part, by reference, and which are issued by the United States Department of Agriculture for the purchase of agricultural commodities or products. Each such announcement will specify terms and conditions, in addition to those included in this Document, which are applicable to the proposed purchase. This Document supersedes Form FV-1 (6-1-67), Document LSP-2 (September 1967) and Document GR-1 (December 1967).

PART I - INFORMATION FOR OFFERERS

ARTICLE 1 - DESCRIPTIVE HEADINGS. The descriptive headings of the various Articles of this Document were formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

ARTICLE 2 - RETENTION OF DOCUMENT. Since various purchases will be made under the terms and conditions of this Document, it is suggested that offerers retain this Document for future reference.

ARTICLE 3 - DEFINITIONS. The following terms and abbreviations used in this Document are defined as follows:

- (a) "Announcement" means the instrument issued by C&MS stating terms and conditions for the purchase of a designated commodity or product. This instrument may also be called an "Invitation for Offers."
- (b) "ASCS Commodity Office" means the Minneapolis ASCS Commodity Office of the Agricultural Stabilization and Conservation Service of USDA.
- (c) "Causes" as used in the phrase "causes beyond the control and without the fault or negligence" includes, but is not restricted to, acts of God or of the public enemy, acts of the Government (including priority or allocation orders), fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; however, in every case the failure to perform must be beyond the control and without the fault or negligence of the party to the contract seeking excuse from liability.

PART I - Cont.

- (d) "C&MS" means the Consumer and Marketing Service of USDA.
- (e) "Contract" means the instruments containing the terms and conditions of the agreement resulting from acceptance of an offer.
- (f) "Contracting Officer" means the person executing the contract on behalf of USDA and any other officer or employee of USDA who is authorized to execute contracts on behalf of USDA.
- (g) "Contractor" means the person, firm, corporation or other legal entity obligated under the contract with USDA.
- (h) "Offer" means the instrument(s) submitted by offerer to USDA in response to an announcement.
- (i) "Offerer" means the person, firm, corporation or other legal entity submitting an offer in response to an announcement.
- (j) "Product" means an agricultural commodity or a product of an agricultural commodity.
- (k) "Subcontractor", for the purposes of Articles 28, 38 and 45 of this Document means a supplier of components (articles, raw materials, and supplies directly incorporated in the product) and of packaging materials.
- (l) "USDA" means the United States Department of Agriculture.

ARTICLE 4 - INQUIRIES BY OFFERERS OR CONTRACTORS. Inquiries concerning the purchase shall be directed to the individual named in the announcement.

Inquiries concerning shipping instructions, marking, shortages, loss or damage, and invoices for payments shall be directed to:

Director, Minneapolis ASCS Commodity Office
U.S. Department of Agriculture
6400 France Avenue South
Minneapolis, Minnesota 55435

Telephone: (612) 725-3315 (Concerning shipping instructions, etc.)

(612) 725-3258 (Concerning payments)

PART II - PREPARATION AND SUBMISSION OF OFFERS

ARTICLE 5 - PREPARATION OF OFFERS. Offerers are cautioned to read this Document and the applicable announcement carefully and to verify prices before submitting offers. By so doing, expensive mistakes may be avoided. Offerers are also cautioned that in making sales to USDA and in submitting invoices for payment of a product delivered to USDA they must satisfy any liens or encumbrances that may be outstanding against the product in accordance with Article 42 of this Document. Failure to disclose liens or encumbrances, or misrepresentation of the actual ownership of the product may result in punishment under the provisions of Federal law.

Special care should be exercised in the preparation of offers. Offerers must make their own estimates of the facilities and difficulties attending the performance of the proposed contract, including local conditions, uncertainty of weather, availability of materials and containers, and all other contingencies. All data required by this Document and the applicable announcement shall be fully and clearly set forth.

ARTICLE 6 - DISCOUNTS FOR PROMPT PAYMENT. The offerer shall specify the cash discount, if any, to be allowed for payment by check dated within the number of days specified for discounts for prompt payment after a properly prepared and documented claim is received by the ASCS Commodity Office, as follows: _____ percent within 20 calendar days; _____ percent within 30 calendar days. Discounts of 1/2 of 1 percent or more will be considered in making awards. Discounts for less than 20 days and discounts of less than 1/2 of 1 percent will not be considered. For taking discounts offered for prompt payment, the period within which the discounted payment may be made will begin on the date of receipt in the ASCS Commodity Office of a properly executed and documented invoice.

ARTICLE 7 - EMPLOYER IDENTIFICATION NUMBER AND PARENT COMPANY. The offerer shall insert in the applicable space on the offer form, or otherwise state, if he has no parent company, his own Employer's Identification Number (E. I. No.) (Federal Social Security Number used on Employer's Quarterly Federal Tax Return, U. S. Treasury Department Form 941), and, if he has a parent company, the name, principal office address, and Employer's Identification Number of his parent company. A parent company is one which either owns or controls the activities and basic business policies of the offerer. To own another company means the parent company must own at least a majority (more than 50 percent) of the voting rights in that company. To control another company such ownership is not required; if another company is able to formulate, determine or veto basic business policy decisions of the offerer, such other company is considered the parent company of the offerer. This control may be exercised through the use of dominant minority voting rights, use of proxy voting, contractual arrangements, or otherwise.

ARTICLE 8 - SIGNING OF OFFERS. Offers must be submitted in the name of the principal. An offer shall set forth the full business name and address of offerer. An offer mailed or hand delivered by the offerer shall be signed by a person authorized to execute contracts on behalf of offerer and any offer submitted by telegram, telex or TWX must bear the name of such person as well as that of the offerer. If the person signing an offer is not the owner, partner, or officer of a corporation, a power of attorney or other documentary evidence of the authority for such person to execute contracts in the name of offerer may be required by USDA if not submitted with the offer or if not already on file with USDA.

ARTICLE 9 - LATE OFFERS AND MODIFICATIONS OR WITHDRAWALS.

- (a) Offers and modifications or withdrawals of offers received at the office designated in the announcement after the exact hour and date specified for receipt will not be considered unless: (1) They are received before award is made; and either (2) they are sent by registered mail, or by certified mail for which an official dated post office stamp (postmark) on the original Receipt for Certified Mail has been obtained and it is determined by USDA that the late receipt was due solely to delay in the mails, for which the offerer was not responsible; or (3) if submitted by mail or by telegram, it is determined by USDA that the late receipt was due solely to mishandling by USDA after receipt at the Department of Agriculture: Provided, That timely receipt at the Department is established upon examination of an appropriate date or time stamp (if any) of such Department, or of other documentary evidence of receipt (if readily available) within the control of the Department or of the post office serving it. However, a modification of an otherwise successful offer which makes its terms more favorable to USDA will be considered at any time it is received and may thereafter be accepted.
- (b) Offerers using certified mail are cautioned to obtain a Receipt for Certified Mail showing a legible, dated postmark and to retain such receipt against the chance that it will be required as evidence that a late offer was timely mailed.
- (c) The time of mailing of late offers submitted by registered or certified mail shall be deemed to be the last minute of the date shown in the postmark on the registered mail receipt or registered mail wrapper or on the Receipt for Certified Mail, unless the offerer furnishes evidence from the post office station of mailing which establishes an earlier time. In the case of certified mail, the only acceptable evidence is as follows: (1) where the Receipt for Certified Mail identifies the post office station of mailing, evidence furnished by the offerer which establishes that the business day of that station ended at an earlier time, in which case the time of

mailing shall be deemed to be the last minute of the business day of that station; or (2) an entry in ink on the Receipt for Certified Mail showing the time of mailing and the initials of the postal employee receiving the item and making the entry, with appropriate written verification of such entry from the post office station of mailing, in which case the time of mailing shall be the time shown in the entry. If the postmark on the original Receipt for Certified Mail does not show a date, the offer shall not be considered.

ARTICLE 10 - CONDITIONAL OFFERS. Any qualification or condition added to the offer by the offerer may make the offer ineligible for consideration.

PART III - CONSIDERATION, ACCEPTANCE OR REJECTION OF OFFERS

ARTICLE 11 - REFUSAL TO CONSIDER. USDA reserves the right to refuse to consider an offer if USDA does not have adequate information to determine responsibility of offerer, financially or otherwise, to meet contract obligations contemplated in the announcement. If a prospective offerer is in doubt as to whether USDA is acquainted with his financial responsibility, he should either submit a financial statement to USDA before making an offer or should communicate with the office named in the announcement to determine whether such a statement is desired from him. When satisfactory financial responsibility has not been established, USDA also reserves the right to consider an offer only after receipt from offerer of a bid bond, acceptable to USDA, assuring that, if the offer is accepted by USDA, an acceptable performance bond or other acceptable security will be furnished as required by USDA or, in lieu of such bid bond, a certified or cashier's check, irrevocable commercial letter of credit, or other security acceptable to USDA. The security for the offer, other than bid bond, will be returned to an unsuccessful offerer as soon as practicable after the opening of offers, and to a successful offerer after he has furnished a performance bond or other security acceptable to USDA.

ARTICLE 12 - ACCEPTANCE OR REJECTION.

- (a) Offers, after public opening, will be accepted in the order in which they are considered to be most advantageous to USDA, considering price, discounts, transportation costs at the option of USDA, and other factors.
- (b) USDA reserves the right to reject any or all offers and to waive any informality or minor irregularity in offers received. USDA may accept any part of an offer unless the offerer qualifies his offer by specific limitations.

PART III - Cont.

- (c) An award by telegram to a successful offerer within the time for acceptance specified in the applicable announcement shall be deemed to result in a binding contract without further action by either party.
- (d) Offerers whose offers are rejected will be notified of such rejection by collect telegram or by letter only if they specifically request such notification.

PART IV - PREAWARD REPRESENTATIONS, CERTIFICATIONS, AND WARRANTIES.

ARTICLE 13 - REPRESENTATION OF BUSINESS STATUS. In submitting an offer, the offerer represents that: (a) He is an established manufacturer of the particular product sought by USDA, or (b) if he is newly entering into such manufacturing activity, he has made all necessary prior arrangements for space, equipment, and personnel to perform the manufacturing operations required for contract performance, or (c) he is a regular dealer already established in a going business regularly dealing in the product or in the principal components of the product sought by USDA.

ARTICLE 14 - INDEPENDENT PRICE CERTIFICATION.

- (a) In submitting an offer, the offerer certifies, and in the case of a joint offer each party thereto certifies as to his own organization, that: (1) The price(s) in the offer have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such price(s) with any other offerer or with any competitor; (2) unless otherwise required by law, the price(s) which have been quoted in the offer have not been knowingly disclosed by the offerer and will not knowingly be disclosed by the offerer prior to the closing time for the receipt of offers, directly or indirectly to any other offerer or to any competitor; and (3) no attempt has been made or will be made by the offerer to induce any other person or firm to submit or not to submit an offer for the purpose of restricting competition.
- (b) Each person signing the offer thereby certifies that: (1) He is the person in the offerer's organization responsible within that organization for the decision as to the prices being offered herein and that he has not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) above; or (2)(i) he is not the person in the offerer's organization responsible within that organization for the decision as to the prices being offered herein but that he has been authorized in writing to act as agent for the persons responsible for such decision in certifying that such persons

have not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) above, and as their agent does hereby so certify; and (ii) he has not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) above.

- (c) An offer will not be considered for acceptance where (a)(1), (a)(3), or (b) above has been deleted or modified. Where (a)(2) above has been deleted or modified, the offer will not be considered for acceptance unless the offerer furnishes with the offer a signed statement which sets forth in detail the circumstances of the disclosure and the contracting officer determines that such disclosure was not made for the purpose of restricting competition.

ARTICLE 15 - DOMESTIC SOURCE END PRODUCT. In submitting an offer, the offerer warrants that each end product is a domestic source end product as defined in Article 22 of this Document; that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States; and that the component which the announcement requires to be wholly produced in the United States was so produced.

ARTICLE 16 - CERTIFICATION OF NONSEGREGATED FACILITIES: (The provisions of this Article are applicable to contracts and subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause set forth in Article 19 of this Document. In submitting an offer, the offerer certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. He certifies further that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The offerer agrees that a breach of this certification is a violation of the Equal Opportunity clause of the contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom, or otherwise. The offerer further agrees that (except where he has obtained identical certifications from proposed subcontractors for specific time periods) he will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the

PART IV - Cont.

provisions of the Equal Opportunity clause; that he will retain such certifications in his files; and that he will forward the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

NOTICE TO PROSPECTIVE SUBCONTRACTORS
OF REQUIREMENT FOR CERTIFICATIONS OF
NONSEGREGATED FACILITIES

A Certification of Nonsegregated Facilities, as required by the May 9, 1967, order (32 F.R. 7439, May 19, 1967), on Elimination of Segregated Facilities, by the Secretary of Labor, must be submitted prior to the award of a subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually).

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

ARTICLE 17 - COVENANT AGAINST CONTINGENT FEES. Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by Contractor for the purpose of securing business. For breach or violation of this warranty, USDA shall have the right to annul the contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE 18 - TAXES. Contractor warrants that the offer price stated includes all applicable Federal, State and local taxes and does not include any Federal, State or local taxes from which the United States is exempt or from which Contractor is exempt because the sale is to an agency of the United States or is for export. When requested by Contractor, USDA shall furnish any necessary tax exemption certificates or, if the product is for export, furnish evidence of exportation.

PART V - POST AWARD PROVISIONS

ARTICLE 19 - EQUAL OPPORTUNITY CLAUSE.

(a) During the performance of the contract, Contractor agrees as follows:

- (1) Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by USDA setting forth the provisions of this nondiscrimination clause.
- (2) Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (3) Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by USDA, advising the labor union or workers' representative of Contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by USDA and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (6) In the event of Contractor's noncompliance with this nondiscrimination clause or with any of such rules, regulations, or orders, the contract may be cancelled, terminated, or suspended in whole or in part and Contractor may be declared ineligible

for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- (7) Contractor will include the provisions of subparagraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. Contractor will take such action with respect to any subcontract or purchase order as USDA may direct as a means of enforcing such provisions, including sanctions for noncompliance; Provided, however, That in the event Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by USDA, Contractor may request the United States to enter into such litigation to protect the interests of the United States.

- (b) It will be the responsibility of Contractor to estimate his requirements for the notices he is to post pursuant to this clause and to make request of USDA for copies thereof.
- (c) This nondiscrimination clause is not applicable to contracts which do not exceed \$10,000.

ARTICLE 20 - CONVICT LABOR. In connection with the performance of work under the contract, Contractor agrees not to employ any person undergoing sentence of imprisonment at hard labor.

ARTICLE 21 - OFFICIALS NOT TO BENEFIT. No member of or delegate to Congress, or Resident Commissioner shall be admitted to any share or part of the contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to the contract if made with a corporation for its general benefit, and shall not extend to any benefits that may accrue from the contract to a member of or delegate to Congress or a Resident Commissioner in his capacity as a farmer.

ARTICLE 22 - BUY AMERICAN ACT.

- (a) The Buy American Act (41 U.S.C. 10a-d) provides that, in acquiring end products, the Government give preference to domestic source end

products. For the purpose of this Article: (1) "Components" means those articles, materials, and supplies which are directly incorporated in the end products; (2) "End products" means the product to be acquired under the contract for public use; and (3) "A domestic source end product" means (i) an unmanufactured end product which has been mined or produced in the United States and (ii) an end product manufactured in the United States if the cost of the components thereof which are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components.

- (b) Contractor shall deliver under the contract only domestic source end products and, if the announcement requires that a particular component shall have been produced in the United States, Contractor shall deliver only an end product containing such component so produced. Components of unknown origin shall be considered to have been mined, produced, or manufactured outside the United States.

ARTICLE 23 - SPECIFICATIONS. The product delivered to USDA shall meet the specifications prescribed by the contract and shall conform to the applicable provisions of the Federal Food, Drug and Cosmetic Act, as amended, and regulations issued thereunder.

ARTICLE 24 - PLANT SANITATION.

- (a) Processed fruits and vegetables, olive oil, honey and peanut butter delivered under the contract shall be processed in a plant which, at the time of processing, is operating in accordance with the plant sanitation requirements prescribed in 7 CFR Part 205. USDA may conduct sanitary inspection of a plant at the expense of USDA during the processing of the product under the contract. If such inspection of the plant during processing indicates that the plant is not operating under the prescribed sanitary requirements, and that the deviation is material, the product offered for inspection and processed under such condition may be rejected by the contracting officer and no further deliveries accepted until the condition is corrected. Rejection for this reason will not relieve the Contractor of his obligation to deliver an acceptable product within the dates specified in the contract, unless the unsanitary condition arises from causes beyond the control and without the fault of the Contractor for which he would be relieved pursuant to an applicable provision of the contract.
- (b) Egg Products delivered under the contract shall be processed in a USDA approved establishment under the supervision of the Grading Branch, Poultry Division, C&MS, USDA, in accordance with "Regulations Governing the Grading and Inspection of Egg Products" (7 CFR Part 55).

PART V - Cont.

- (c) Canned Poultry delivered under the contract shall have been eviscerated in a plant operating under the Poultry and Poultry Products Inspection and Grading Program (7 CFR Part 70). In addition, it shall be processed under supervision of representatives of Processed Food Inspection Division, C&MS, USDA, in accordance with "Regulations Governing the Inspection of Poultry and Poultry Products" (7 CFR Part 81).
- (d) Frozen Poultry delivered under the contract shall be processed in plants operating under the Poultry and Poultry Products Inspection and Grading Programs of USDA in accordance with regulations governing the grading and inspection of poultry and poultry products (7 CFR Parts 70 and 81).
- (e) Red Meats or derivatives therefrom delivered under the contract shall be processed in an establishment owned or leased by Contractor that is regularly operated under the USDA Regulations Governing Meat Inspection.
- (f) Products containing only vegetable oils shall be processed in an establishment owned or leased by Contractor that is regularly operated under the USDA Regulations Governing Meat Inspection, or shall be processed in an establishment owned or leased by Contractor that was approved by USDA for sanitary conditions prior to submission of an offer.

ARTICLE 25 - PACKAGING AND PACKING.

- (a) The packaging and packing requirements vary in accordance with each product being purchased. The product shall be packaged and packed in accordance with the specific requirements indicated in the purchase announcement.
- (b) The following requirements are generally applicable to all products:
 - (1) All packaging and packing materials shall be new and shall not impart an objectionable odor or flavor to the product.
 - (2) Fiberboard shipping containers must be acceptable by common or other carriers for safe transportation to destination.
 - (3) If canned, the product shall be packed in sound, bright, clean, sanitary type cans, suitable for the product, and of such quality and material as to withstand normal processing and packaging procedures without damage to either

the can or product. The cans shall possess a vacuum at the time of inspection as determined by the prescribed or conventional method of testing for vacuum. The cans shall be suitably code-marked so that the product can be identified with the related inspection certificate.

- (4) Examination for compliance with packing, labeling, and marking requirements shall be in accordance with "United States Standards for Condition of Food Containers" (7 CFR Part 42).

ARTICLE 26 - INSPECTION.

- (a) Inspection shall be made by a person or inspection or grading service designated by USDA. Contractor is responsible for requesting inspection of the product in sufficient time to permit issuance of a certificate of inspection before the date on which shipment is to be made.
- (b) The cost of inspection, samples furnished for inspection, and any chemical analysis required for such inspection shall be for the account of Contractor unless otherwise provided in the contract. Contractor shall furnish the labor necessary to make the product accessible for inspection, the equipment necessary for checkweighing, and satisfactory facilities and space for sampling, grading, and recordkeeping. Chemical analysis, when required, shall be made in accordance with the "Official and Tentative Methods of Analysis" of the Association of Official Analytical Chemists in effect on the date of contract, or any other method determined by USDA to give comparable results.
- (c) Inspectors or graders have no authority to prescribe any changes in the contract or to order Contractor to perform contrary to any manner prescribed in the contract. Furthermore, inspectors have no authority to accept or reject products tendered under the contract. Inspectors are authorized only to determine whether products meet the contract requirements.
- (d) Inspection shall not relieve Contractor of his responsibility to furnish a product, including packages and containers, meeting specifications. An inspection certificate is only prima facie evidence of the matters therein stated at the time and place of inspection.
- (e) If any reinspection is performed by USDA at destination points, the cost thereof shall be borne by USDA if the product is found to be in compliance with the contract provisions, otherwise the cost shall be borne by Contractor.

PART V - Cont.

ARTICLE 27 - CHECKLOADING.

- (a) Contractor shall not load the product for shipment unless at the time of such loading the product is checkloaded by a person or inspection or grading service designated by USDA. Contractor is responsible for giving notice in sufficient time for a checkloader to be present. The cost of checkloading shall be for the account of Contractor. Checkloading refers to identifying the product which was previously inspected and found to meet quality requirements of the contract, to examining the product at the time of loading for condition of containers and for compliance with labeling and container marking requirements, and to determining the number of containers per car or truck.
- (b) Checkloading by persons licensed or authorized by USDA does not relieve Contractor of his obligation to effect a delivery of the product meeting the requirements of the contract or constitute a waiver of any of USDA's rights under the contract. The certificates issued as a result of such official checkloading shall be only prima facie evidence of the number and condition of containers loaded and shipped to USDA by Contractor.
- (c) Contractor shall be liable for all shortages which occur before delivery, except that Contractor, if shipment is by common carrier, shall not be liable for a shortage reported at destination unless it can be established, notwithstanding the checkloading certificate, that there was an actual shortage at the time of loading for shipment.
- (d) With respect to shipment by truck, charges resulting from "Exclusive Use of Vehicle", which are in excess of charges had shipment been made by truck other than on an exclusive use basis, shall not be reimbursable under Article 36 of this document, unless "Exclusive Use of Vehicle" is specifically requested by USDA. The sealing of trucks as part of the checkloading procedure shall not be construed as such a request. In the absence of a specific request for "Exclusive Use of Vehicle" Contractor shall be responsible for making such arrangements as may be necessary to prevent the application of "Exclusive Use of Vehicle" charges when such charges result in higher transportation costs. The arrangements to be made by Contractor may include an instruction to the checkloader not to seal the truck when the sealing will result in "Exclusive Use of Vehicle" charges. If, notwithstanding such arrangements, the checkloader seals the truck, Contractor shall have the responsibility for removing the seal.

ARTICLE 28 - SHIPMENT AND DELIVERY.

- (a) Contractor shall be responsible for loading and bracing cars or trucks in accordance with carrier's regulations, and any other applicable regulations, to provide safe shipment to destination.
- (b) The product shall be delivered by Contractor in the manner (f.a.s. vessel, f.o.b. cars, etc.) and at the point or points of delivery, as required by the contract, pursuant to shipping instructions issued by USDA. Shipment shall not be made before receipt from USDA of shipping

instructions, or before the time the product has been inspected and found to meet contract specifications.

- (c) Notwithstanding any date or dates specified in the original shipping or delivery instructions, Contractor shall not be required to ship or deliver prior to 14 calendar days following the issuance of shipping or delivery instructions or to effect shipment or delivery at a faster rate than specified in the offer, but USDA and Contractor may agree to an increase in the shipping or delivery rate or to shipment or delivery earlier than the first day of the shipping or delivery period specified in the announcement.
- (d) Immediately on shipment, Contractor shall, in accordance with instructions notify USDA, or consignee, or both, of the shipment.
- (e) Except as provided in Article 27(c) of this Document, and subject to the right of rejection as provided in Article 33 of this Document, title and risk of loss shall pass to USDA on delivery of the product, which, if delivery is f.a.s. vessel, shall be when the product is placed: (1) alongside vessel within reach of its tackle, or (2) on the dock designated by USDA if (i) Contractor shipped the product pursuant to the terms of the shipping instructions, (ii) the product arrived at port within the normal transit time, as determined by USDA, and (iii) the vessel is not available.
- (f) If delivery is made f.a.s. vessel at a designated port, Contractor shall pay all costs, including but not limited to wharfage, tollage, checking and handling charges necessary to place the product free alongside vessel within reach of its loading tackle, and shall furnish a dock receipt, ship's receipt or other similar document as evidence of delivery. If, after arrival of product at the designated port, Contractor is delayed in delivering the product f.a.s. vessel at such port, and Contractor establishes that such delay is due to causes beyond the control and without the fault or negligence of Contractor and any of his subcontractors, including but not limited to failure of USDA to make a vessel or dock available, USDA shall reimburse Contractor on presentation of paid bills for charges incurred in connection with storage in cars and for other charges resulting from such delay, provided that Contractor shipped the product pursuant to the terms of the shipping instructions and the product arrived at port within the normal transit time, as determined by USDA.

ARTICLE 29 - LOADING OF SPLIT SHIPMENT. If shipping instructions require partial unloading at a stop-off en route, Contractor shall order cars equipped with bracing devices and

shall properly brace the loaded product with such devices. Contractor shall not delay shipment if the carrier is unable to furnish bracing equipment promptly. If the carrier is unable to furnish such equipment, Contractor shall load and brace the product in accordance with good commercial practice and the provisions of the American Association of Railroads Loading Pamphlet applicable to such product. The cost of any necessary bracing for split shipment shall be for the account of Contractor.

ARTICLE 30 - PROTECTIVE SERVICES

- (a) If the contract specifies that delivery is to be made f.o.b. cars or trucks at point of origin, Contractor shall order protective services as specified in the shipping instructions issued by USDA.
- (b) If the contract provides for delivery at point(s) other than f.o.b. cars or trucks at point of origin, Contractor shall provide protective services when, and to the extent, necessary to adequately protect the product while in transit, including allowable free time for unloading at intermediate or final destination(s) or both.

ARTICLE 31 - VARIATION FROM CONTRACT QUANTITY. Except as may be provided for in the applicable announcement, no variation from the contract quantity will be permitted to be shipped. Any weight variation which may be permitted in such announcement is provided for the express purpose of expediting individual shipments and to alleviate conditions of loading and packing and is not to be construed as an automatic device for an extension or reduction of the quantity purchased. Consequently, USDA will not pay Contractor for any quantities delivered and accepted in excess of the contracted quantity, plus any permitted tolerance; and Contractor, if he underships in excess of any permitted tolerance, shall be responsible, at the option of USDA, for shipping at his own expense sufficient product to make up the contracted quantity. If the shipment of such shortage is made subsequent to the applicable shipping period provided in the contract, liquidated damages as provided in Article 37 of this Document may be assessed against the quantity so shipped late.

ARTICLE 32 - CONSIGNEE'S RECEIPTS.

Contractor shall obtain consignee's receipts on forms furnished by USDA for each delivery made except Contractor need not obtain such receipts when the product is (a) delivered in store and warehouse receipts are issued, (b) shipped by common carrier unless specifically requested by USDA in advance of shipment, or (c) when delivery is made f.a.s. vessel at a designated port, in which case Contractor shall obtain a dock receipt, ship's receipt, or other similar document as evidence of delivery.

ARTICLE 33 - FAILURE OF THE PRODUCT TO MEET CONTRACT REQUIREMENTS AND SPECIFICATIONS.

- (a) Contractor shall be liable for failure of the product to meet all of the contract requirements and specifications (including those with respect to packages and containers). If upon delivery all or any part of the product does not meet all of the contract requirements and specifications, USDA shall have the right:
- (1) To accept the entire quantity and hold Contractor for damages sustained, as determined by USDA; or
 - (2) To reject the entire quantity, or reject any portion thereof and accept the remainder. In either event, Contractor shall be held liable for damages sustained as determined by USDA. USDA may in its discretion terminate the contract with respect to the quantity rejected or permit Contractor to replace all or part of the quantity rejected with a quantity of the product that does conform to all contract requirements and specifications and, in either circumstance, hold Contractor for damages sustained, as determined by USDA.
- (b) Any quantity rejected may be returned to Contractor, destroyed (if unfit for any use), or disposed of for the account of Contractor in accordance with applicable health or sanitation laws and regulations. Any rejection of a common carrier delivery shall be made by the ASCS Commodity Office. Consignees may reject a delivery by contract carrier or by Contractor's own truck. Issuance of inspection and checkloading certificates, shipping instructions, or bills of lading, or the making of payment by USDA or the receipt of product shall not constitute a waiver of USDA's rights under this Article.
- (c) Damaged products found upon delivery will not be accepted by the consignees except to the extent specifically authorized by USDA. If delivery was by Contractor's own trucks or contract carriers, Contractor shall arrange for the drivers to return the rejected products. If delivery was by common carrier, and there was a shortage of or damage to any quantity of the product, the consignee shall on discovery notify carrier's agent and prepare a shortage or damage report. USDA shall furnish Contractor a copy of such report.
- (d) An amount equal to the sum of the contract price of the rejected quantity returned to Contractor or found unfit for use and destroyed and the charges for transportation, accessorial and other services on such quantity shall be deducted by USDA if the returned or destroyed quantity is included on Contractor's unpaid invoice for

the shipment. If such invoice has been paid, such amount shall be remitted by Contractor to USDA promptly upon demand. An amount equal to the sum of the contract price of the rejected quantity which is disposed for the account of Contractor and the charges for any transportation, accessorial and other services on such quantity, minus either (1) the proceeds from the sale of the quantity less expenses of sale, or (2) the market value, as determined by USDA, of any quantity used by consignee for other than human consumption, shall be deducted by USDA if the quantity so sold or used is included on Contractor's unpaid invoice for the shipment. If the invoice has been paid, such sum shall be remitted by Contractor to USDA promptly on demand. All expenses, as determined by USDA, incurred by the consignee or USDA in segregating, repackaging, salvaging and disposing of any quantity which fails to meet contract requirements and specifications shall be deducted by USDA from any amounts due Contractor, or, if no amounts are due, such expenses shall be remitted to USDA promptly on demand. USDA shall furnish Contractor with a copy of invoices covering such expenses.

- (e) The rights and remedies of USDA provided in this Article are not exclusive or in derogation of any other rights and remedies provided by law or the contract.

ARTICLE 34 - LOSS DUE TO DETERIORATION OR SPOILAGE. Contractor shall reimburse USDA for all losses due to deterioration or spoilage sustained by USDA for which Contractor is responsible, but only if such losses are discovered within 9 months after date of shipment to USDA, and USDA has notified Contractor within 30 calendar days after such losses are discovered. The 9-month period referred to herein shall begin on the date of shipment to USDA and shall end on the day preceding the same date, 9 calendar months thereafter. Reimbursement shall be made to USDA at the contract price plus other charges for which Contractor was reimbursed by USDA and for other charges incurred by USDA. Such other charges may include, but are not limited to, reinspection, labor charges, and materials in connection with segregation and repackaging when required, and storage charges incurred on the product held for reinspection, segregation or repackaging. Contractor agrees to reimburse USDA for such losses within 10 calendar days after date of billing by USDA. That part of the product as to which USDA makes a claim based on deterioration or spoilage shall be held by USDA subject to disposition instructions of Contractor (unless the nature of the deterioration or spoilage is such as to require condemnation and destruction as determined by USDA or its authorized representative) but

shall not be held by USDA in excess of 30 calendar days after USDA sends notice of such claim to Contractor. In lieu of reimbursing USDA Contractor may replace the deteriorated or spoiled product with an equal quantity of product which conforms to all contract requirements and specifications, if such replacement is agreed to by USDA.

ARTICLE 35 - DISPOSITION OF REJECTED OR UNUSED CONTAINERS OR LABELS.

- (a) The appearance in commercial or other channels of any labels, bags, containers or packaging bearing markings required under the contract may cause USDA expense in determining whether products have been diverted from authorized use and in answering inquiries. Contractor, therefore, agrees that he will delete or obliterate, or arrange for the deletion or obliteration of, any such markings on any labels, bags, containers, or packaging which are not accepted by USDA. If any labels, bags, containers or packages appear in commercial or other channels without deletion or obliteration of such markings, Contractor agrees to pay liquidated damages of \$100.00 for the first inquiry or complaint received by USDA arising from any actual breach of this provision and \$25.00 for each additional inquiry or complaint arising from the same breach.
- (b) Contractor is cautioned that the contents of paragraph (a) of this Article pertain also to product rejected to railroad carriers. Through agreement between USDA and the railroads, it will be considered as complete obliteration of markings for the purposes of this Article, if the railroads stamp the containers rejected to them "Railroad Salvage." It is incumbent upon Contractor, however, to assure that markings are obliterated or that containers are so stamped. Failure to do so subjects Contractor to liquidated damages as stated in paragraph (a) of this Article if inquiries or investigations result.

ARTICLE 36 - REIMBURSEMENT FOR TRANSPORTATION AND PROTECTIVE SERVICE CHARGES.

- (a) If the product price is on the basis of delivery f.o.b. cars or trucks at point of origin but actual delivery is to be made otherwise:
- (1) USDA shall reimburse Contractor for transportation and other charges incurred in making delivery at destination(s) named by USDA as follows:
- (i) If delivery by rail is requested, reimbursement shall be an amount determined on the basis of the lowest applicable single or multi-factor rail rate via the most economical route from the f.o.b. origin point.
- (ii) If delivery by truck is requested, reimbursement shall be the actual cost, or, if Contractor uses his own truck, an amount determined on the basis of an agreed rate: Provided, That in no event shall reimbursement exceed an amount determined by USDA on the basis of the lowest applicable common or contract motor carrier rate via the most economical route from the f.o.b. origin point.
- (iii) If delivery is requested to be made either by rail or truck at Contractor's option, reimbursement shall be on the basis of the mode of transportation that would provide the lowest overall cost to USDA determined on the basis of subdivisions (i) and (ii) of this subparagraph.
- (iv) If delivery is made f.a.s. vessel, USDA shall reimburse Contractor also for the actual cost of wharfage, tollage, checking and handling at port incurred by Contractor which were necessary for delivery of the product; but for storage in cars only as provided in Article 28(f) of this Document.
- (2) USDA shall reimburse Contractor for the cost of protective services incurred under Article 30(b) of this Document, but not in excess of the lowest applicable common carrier charge for such services by the most economical route.
- (b) If Contractor requests a change in the shipping point named in the contract and such request is approved by USDA, any excess costs of transportation and related services shall be deducted from payments otherwise due Contractor and any savings shall accrue to USDA.

- (c) If the product price is on the basis of delivery f.o.b. cars or trucks at destination or f.a.s. vessel at designated ports and if USDA orders delivery of the product to destinations other than those stated in the contract, any additional cost of transportation and other charges shall be for the account of USDA and any savings will accrue to USDA.

ARTICLE 37 - LIQUIDATED DAMAGES FOR LATE SHIPMENT OR DELIVERY.

- (a) The contract will provide for one or more deliveries to be made by a certain date or in accordance with a delivery schedule or will provide for one or more shipments to be made from point of origin by a certain date or in accordance with a shipping schedule. Delay in performance of such delivery or shipment will cause serious and substantial damages to USDA because of its urgent need for timely performance. Contractor shall be liable to USDA for liquidated damages at the daily rate set forth in the announcement. If USDA exercises its right of termination as provided in Article 38 of this Document, the amount of liquidated damages for any quantity for which there is delay shall be determined by multiplying the quantity times the daily rate times the sum of the calendar days commencing on the first day following the last day on which such quantity was required to be delivered or shipped under the contract and ending on the day when USDA determines it could have obtained delivery or shipment elsewhere. If USDA does not exercise its right of termination under Article 38 of this Document, the amount of liquidated damages for any quantity for which there is delay shall be determined by multiplying the quantity times the daily rate times the sum of the calendar days commencing on the first day following the last day on which such quantity was required to be delivered or shipped under the contract and continuing through the day of delivery or shipment. In no event shall liquidated damages be imposed beyond 15 calendar days. Liquidated damages determined pursuant to this Article shall be the damages for delay in shipment or delivery referred to in Article 38 of this Document. The provisions of Article 38 of this Document excusing Contractor from liability shall excuse also the assessment of liquidated damages under this Article. Determinations as to whether causes for delay are beyond the control and without the fault or negligence of the Contractor and subcontractor shall be made by the contracting officer.
- (b) Liquidated damages shall not be assessed on a quantity which is replacing a delivery or shipment that was rejected at destination if the rejected product passed inspection at point of origin; but liquidated damages shall be assessed for any delay in the original shipment, and if the replacement quantity was not delivered or shipped within the agreed time for the replacement.

ARTICLE 38 - DEFAULT AND TERMINATION

- (a) USDA may, by written notice of default to Contractor, terminate all or any part of the contract if Contractor fails to make shipment or delivery of the product within the time required by the contract or any extension of such time by the Contracting Officer.
- (b) If USDA terminates all or any part of the contract, USDA may procure a similar product elsewhere, on such terms and in such manner as the Contracting Officer may deem appropriate, and Contractor shall be liable to USDA for any excess cost incurred in procuring such similar product. Contractor shall, in addition to such excess cost, be liable to USDA for any other cost or damages sustained, as determined by USDA, including but not limited to damages for delay in shipment or delivery.
- (c) Except for defaults of subcontractors, Contractor shall not be liable to USDA for damages sustained by reason of delay in performance or for any excess costs incurred by USDA in procuring elsewhere if the failure to perform arises out of causes beyond the control and without the fault or negligence of Contractor. (Contractor shall, however, remain liable for other costs and damages such as those determined under Article 35 of this Document.) If the failure to perform is caused by default of a subcontractor and the default arises out of causes beyond the control of both the Contractor and subcontractor and without the fault or negligence of either of them, Contractor shall not be liable for damages sustained by USDA for such delay or for excess costs incurred by USDA in procuring elsewhere unless the supplies to be furnished by the subcontractor were obtainable by Contractor from other sources in sufficient time to permit Contractor to meet the required time of shipment or delivery.
- (d) Deductions representing the damages and costs sustained may be made by USDA from any amounts due Contractor. The rights and remedies of USDA provided in this Article shall not be exclusive and are in addition to any other rights and remedies provided by law and the contract.

ARTICLE 39 - INVOICES. Invoices for payment for the product and for reimbursement of transportation and protective service charges, if any, shall be submitted separately by Contractor to the ASCS Commodity Office. Invoices for payment for the product shall be made on the invoice portion of Form MP-269 "Notice to Deliver" and be supported by the original (official) inspection and checkloading certificate(s), and either a copy of commercial bill of lading signed by carrier's agent or, in lieu of the bill lading, a consignee's receipt

if the product was delivered (1) locally to the consignee, (2) by Contractor's truck, or (3) by a truck under contract with Contractor. IT IS MUTUALLY AGREED AND UNDERSTOOD THAT IN SUBMITTING AN INVOICE, THE CONTRACTOR THEREBY CERTIFIES THAT ALL REQUIREMENTS OF THE CONTRACT HAVE BEEN SATISFIED AND CONTRACTOR HAS COMPLIED FULLY WITH THE REPRESENTATIONS, CERTIFICATIONS AND WARRANTIES SET FORTH IN PART IV OF THIS DOCUMENT. SUBMISSION OF AN INVOICE WHEN ALL CONTRACT TERMS AND CONDITIONS HAVE NOT BEEN SATISFIED WILL SUBJECT CONTRACTOR TO PUNISHMENT AS PROVIDED IN TITLE 18, UNITED STATES CODE, CRIMES AND CRIMINAL PROCEDURE. Invoices for reimbursement of transportation and protective service charges, if any, shall be supported by the original or a copy of carrier's receipted freight bill or invoice. If shipment is by contract carrier, Contractor's invoice shall also be supported by a copy of the contract between Contractor and the truck line showing the schedule of rates, or a copy of the truck line's published rates.

ARTICLE 40 - PAYMENT. USDA shall make payment to Contractor (or his assignee if an assignment is made pursuant to Article 43 of this Document) of any amounts due under the contract as soon as practicable after receipt by the ASCS Commodity Office of a properly prepared invoice with the required supporting documents. Each invoice may cover one or more shipments or deliveries.

ARTICLE 41 - SETOFF. If Contractor is indebted to USDA, the amount of such indebtedness may be set off against the proceeds of the contract after deduction of amounts, if any, due prior lienholders. If Contractor is indebted to the United States for taxes and notice of lien has been filed in accordance with the provisions of the Internal Revenue Code of 1954 (26 U.S.C. 6323) or any amendments or modifications thereof, or Notice of Levy has been served on USDA in accordance with the provisions of the Internal Revenue Code (26 U.S.C. 6331) against money payable to the debtor, or if Contractor is indebted to any other agency of the United States, the amount of such taxes or debt may likewise be set off against the proceeds of the contract. For an assignment as provided in Article 43 of this Document, the following provisions shall apply:

(a) Notwithstanding the assignment, USDA may set off:

- (1) Any amounts due USDA under the provisions of the contract;
- (2) Any amounts for which Contractor is indebted to the United States for taxes and for which a notice of lien was filed or a Notice of Levy was served in accordance with the provisions of the Internal Revenue Code of 1954 (26 U.S.C. 6323, 6331), or any amendments or modifications thereof, before acknowledgment by USDA of receipt of the notice of assignment; and

- (3) Any amounts, other than amounts specified in subparagraphs (1) and (2) of this paragraph, due USDA or any other agency of the United States if USDA notified the assignee of such amounts to be set off at the time acknowledgement was made of receipt of notice of such assignment.
- (b) Any indebtedness of Contractor to any agency of the United States which may not be set off pursuant to paragraph (a) of this Article, may be set off against any amount due and payable under the contract which remains after deduction of amounts (including interest and other charges) owing by Contractor to the assignee for which the assignment was made.
- (c) Setoff as provided in this Article shall not deprive Contractor of any right he might otherwise have to contest the justness of the indebtedness involved in the setoff action either by administrative appeal or by legal action.

ARTICLE 42 - WAIVER OF LIENS. The product delivered by Contractor shall be free of all liens or encumbrances or, if any liens or encumbrances exist, a proper waiver shall be submitted with the Contractor's invoice. The holder of any lien or encumbrance may execute such waiver and be named by Contractor as joint payee on invoices. The holder of any lien or encumbrance may also execute such waiver in connection with an assignment as provided in Article 43 of this Document. If a waiver of lien or encumbrance is executed under this Article, and if Contractor is indebted to the Government under any transaction not under the contract, setoff of such indebtedness may be made against any amount due and payable under the contract which is in excess of the amount of the lien or encumbrance (including interest) covered by the waiver.

ARTICLE 43 - ASSIGNMENT. No assignment by Contractor shall be made of the contract or of any rights thereunder, except that, pursuant to the provisions of the Assignment of Claims Act of 1940, as amended (31 U.S.C. 203, 41 U.S.C. 15), if the contract provides for payments aggregating \$1,000 or more, claims for moneys due or to become due Contractor from USDA under the contract may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency. Any such assignment shall be recognized only if and when the assignee thereof files with USDA written notice of the assignment, together with a signed copy of the instrument of assignment, in accordance with the instructions on Form C&MS-66 or ASCS-66, "Notice of Assignment." When giving notice of an assignment to USDA, the assignee may use those forms or his own form. Also, any assignment shall cover all amounts payable under the contract, and not already paid, shall not be subject to further assignment, and shall not be

made to more than one party, except that any such assignment may be made to one party as agent or trustee for two or more parties participating in such financing. The "Instrument of Assignment" may be executed on Form C&MS-347 or Form ASCS-347, or the assignee may use his own form of assignment. Forms may be obtained from the Contracting Officer or the ASCS Commodity Office.

ARTICLE 44 - DISPUTES.

- (a) Except as otherwise provided in the contract, any dispute concerning a question of fact arising out of the contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail or otherwise furnish a copy to Contractor. The decision of the Contracting Officer shall be final and conclusive unless, within 30 calendar days from the date of receipt of such copy, Contractor mails or otherwise furnishes to the Contracting Officer a written appeal addressed to the Secretary of Agriculture. The appeal shall be forwarded by the Contracting Officer to the Board of Contract Appeals of USDA, whose decision shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this Article, Contractor shall be afforded an opportunity to be heard and to offer evidence in support of his appeal. Pending final decision hereunder of a dispute, if performance under the contract has not been completed by Contractor or terminated by USDA, Contractor shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision.
- (b) This "Disputes" clause does not preclude consideration of any questions of law in connection with decisions provided for in subparagraph (a) of this Article, but nothing in the contract shall be construed as making final the decision of any administrative official, or representative, on a question of law.

ARTICLE 45 - AUDIT OF RECORDS AND ACCESS TO PREMISES.

- (a) Contractor agrees that USDA and the Comptroller General of the United States through their duly authorized representatives shall, until the expiration of three years after final payment under the contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of Contractor involving transactions relating to the contract.

PART V - Cont.

(b) Contractor further agrees to include in all his subcontracts hereunder a provision to the effect that the subcontractor agrees that USDA or the Comptroller General of the United States through their duly authorized representatives shall, until the expiration of three years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor, involving transactions related to the subcontract. The term "subcontract" as used in this Article excludes:

- (1) purchase orders not exceeding \$2,500,
- (2) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public, and
- (3) bills of lading of common carriers or contract carriers.



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